

BEYS LISTON MOBARGHA & BERLAND LLP
Michael P. Beys

August 18, 2015

VIA ECF

The Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *In Re Civil and Criminal Contempt Proceedings*, 12 MC 557 (BMC)

Dear Judge Cogan:

We are co-counsel to movant Felix Sater in the above-captioned contempt proceedings in which the Court recently issued an Order referring Frederick M. Oberlander and Richard E. Lerner for criminal investigation by the U.S Attorney's Office for the Eastern District of New York. We write to apprise the Court of an article Mr. Lerner published on August 12, 2015 in *Law360*, a legal news service, entitled "Secret Prosecutions And The Erosion Of Justice" ("The Article," enclosed). Among other things, the Article violates the sealing orders at issue in these proceedings, as it references and uses information derived from sealed materials, namely, Mr. Sater's presentence investigative report ("PSR"). (See The Article, at 2 & fn. 49).

As the Court is no doubt aware, on August 4, 2015 Mr. Lerner brought an emergency motion seeking permission to publish this article. (ECF No. 118). The Court denied the motion the next day, stating in the docket text that: "The Court declines to provide an advisory opinion. The scope of the injunctions and orders at issue are clear, and respondent has a continuing obligation to conduct himself in accordance with them."

Despite the Court's warning, Mr. Lerner published the article anyway, and in doing so, violated the sealing orders at issue in these proceedings. As the Court is again no doubt aware, Mr. Sater's PSR has been under seal at all relevant times in this and the numerous related litigations; its sealing is at very the heart of these proceedings and the numerous related proceedings; and, above all, the courts have ordered Mr. Lerner and his confederate, Mr. Oberlander, to return or destroy the PSR on numerous occasions for the last five years.

Additionally, it is apparent that Mr. Oberlander, who wrote separately to the Court and adopted Mr. Lerner's arguments (ECF No. 119), was involved in the preparation and publication of the article. As Mr. Lerner writes at the end of the article,

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“The author would like to thank attorney Frederick Oberlander for uncovering much of the judicial and prosecutorial misconduct discussed in this article.” (*Id.* at 25).

Respectfully Submitted,

/s/ Michael P. Beys

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Counsel for Felix Sater

cc. Robert S. Wolf, Esq. (via ECF)
Simon Miller, Esq. (via ECF)
Richard E. Lerner, Esq. (via ECF)